

BLANCHE W. PETERSON

IBLA 82-1209

Decided October 8, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 50943 through A MC 50954.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Recordation

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, each to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance upon a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not

authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

APPEARANCES: William C. Porter, Esq., Kingman, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Blanche W. Peterson appeals the July 13, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Atlas, Atlas Nos. 1 through 3, Arizona Vivian, Arizona Vivian Nos. 1 and 2, Mohave and Banner lode mining claims, and the Deep Channel No. 1, Ancient Flo and Indian Summer placer mining claims, A MC 50943 through A MC 50954, abandoned and void because of noncompliance with the recording requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). These claims were located prior to October 21, 1976, and so were required to have copies of the notices of location and evidence of assessment work performed on the claims filed with BLM on or before October 22, 1979, as set forth in FLPMA and 43 CFR 3833.1-2 and 3833.2-1. Copies of the location notices were filed with BLM August 1, 1979, but the first evidence of assessment work was not filed with BLM until December 5, 1979.

Appellant states that information from BLM in an information sheet styled "Questions and Answers--Recording of Mining Claims" was erroneous and misleading. Relying on the information given in the sheet, she recorded the location notices of her claims with BLM August 1, 1979, and submitted proofs of labor December 5, 1979, well before the end of the year. Appellant now acknowledges that the regulation, 43 CFR 3833.2-1, clearly calls for the initial proof of labor to be filed with BLM by October 22, 1979, for claims which are located prior to October 21, 1976, as hers were. She states that she was unaware of the regulation when BLM gave her the information sheet, which clearly stated evidence of assessment work did not have to be filed with BLM until the year following recordation of the claims. Appellant requests reversal of the BLM decision because she should not be penalized because of the outright erroneous information given by BLM.

The record shows that appellant has timely submitted proofs of labor in the subsequent years, 1980 and 1981.

Information similar to the BLM materials referred to by appellant, entitled "Questions and Answers, Recording of Mining Claims," has been the subject of our scrutiny before. See John Murphy, 58 IBLA 75 (1981); John Plutt, Jr., 53 IBLA 313 (1981). These materials, in the form of a pamphlet, consisted of a series of questions and answers which by the pamphlet's own terms were "offered as a guide to those who are affected [by the FLPMA recordation requirements]." The pamphlet's answer to the question, "How often do mining claim owners file this assessment work or notice of intent," was, "All claimants must file either evidence of assessment work or a notice of intent [to hold the claim] by December 31 of the calendar year following the date of recordation with BLM." Appellant correctly points out that the BLM pamphlet gave out "outright erroneous information," in that it purported to allow a mining claimant to wait to file the evidence of assessment work until the end

of the calendar year following recordation. In this case, appellant filed the evidence of assessment work prior to December 31 of the year in which she had done the required assessment work.

[1] In fact, however, as appellant concedes, for claims located on or before October 21, 1976, as hers were, section 314 of FLPMA requires the filing with BLM of a copy of the official notice of location or certificate of location, 1/ and either a notice of intention to hold the mining claim or, an affidavit of assessment work performed thereon, 2/ on or before October 22, 1979.

Each required document also must have been filed or recorded by October 22, 1979, with the proper local or state office having the responsibility under state law for recording location notices. 3/ Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

1/ Section 314(b) of FLPMA, 43 U.S.C. § 1744(b), states in full:

"(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976, shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground."

2/ Section 314(a) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) reads:

"(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection.

"(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of Title 30, relating thereto.

"(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground."

3/ See 43 U.S.C. § 1744(a) and (b), and 43 CFR 3833.1-2(a) and (b). See also 43 CFR 3833.2-3(a).

Appellant asserts that it is because of her reasonable reliance upon the BLM information that she failed to meet the statutory requirements, and that she had every honest intention to comply, and that she had no intention to effect an abandonment of her claims. She argues for reversal of BLM, implicitly suggesting estoppel of the Government.

[2] We sympathize with appellant to the extent she was misled by BLM's misstatement of what is required under section 314 of FLPMA. However, we cannot indulge appellant in her request for reversal on the ground of estoppel. One of the essential elements of an estoppel situation is that the party asserting estoppel must be ignorant of the material facts. In this case, the facts about which appellant claims she was misled were the applicable statutory and regulatory rules of recordation. But it is an established rule of law that "all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947); *Edward W. Kramer*, 51 IBLA 294 (1980)." *John Plutt, Jr.*, *supra* at 316. Thus, this presumption precludes appellant's suggestion that estoppel may lie, because she cannot claim ignorance of the true facts. A careful reading of the statute and the governing regulation, 43 CFR 3833.2-1(a), ^{4/} would have clearly indicated that evidence of assessment work or notice of intention to hold must have been filed by appellant with BLM on or before October 22, 1979. Moreover, as we recently stated:

[R]eliance upon erroneous or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. *Parker v. United States*, 461 F.2d 806 (Ct. Cl. 1972); * * * *Atlantic Richfield Co. v. Hickel*, 432 F.2d 587 (10th Cir. 1970).

Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 373 (1981).

We point out that the courts have been validating FLPMA, including section 314(c) specifically, despite attacks against its constitutionality. For example, when presented with an argument that the conclusive presumption of abandonment acts as a forfeiture statute violative of due process, the Ninth Circuit, in *Western Mining Council v. Watt*, 643 F.2d 618, 629 (9th Cir. 1981), stated, "[W]e reject plaintiffs' conclusion that the provisions of § 1744(c) are unreasonably harsh in requiring that mining claims be conclusively presumed to be abandoned upon failure to file." ^{5/} Thus, the

^{4/} This regulation states:

"(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976 shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever [sic] date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim."

^{5/} In this opinion the Ninth Circuit relied extensively on the reasoning and language of *Topaz Beryllium Co. v. United States*, 479 F. Supp. 309 (D. Utah 1979), *aff'd*, 649 F.2d 775 (10th Cir. 1981).

statute's clear provision for conclusive abandonment requires us, on these facts, to find that the decision below is correct. We regret the harshness of this unavoidable result, and we remind appellant that she may relocate her claims, subject to any valid intervening rights of third parties or of the United States and assuming the availability of the land to mining location, by filing the applicable instruments, based on the new location dates, as prescribed by the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

